

Attorney Docket No.: GCI-0017
Inventors: Wunderink et al.
Serial No.: 09/973,850
Filing Date: October 10, 2001
Page 2

REMARKS

Claim 1 is pending in this application.

Claim 1 has been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent 6,294,339.

Applicants respectfully traverse this rejection.

The Examiner is correct in that claim 1 of the instant application is drawn to method of identifying a human patient at an increased risk of death from community-acquired pneumonia (CAP) associated with the A allele in a TNF α gene of SEQ ID NO:1 at the -308 locus. However, the Examiner is incorrect in his assertion that claims of U.S. Patent 6,294,339 are drawn to a method of identifying patients that are at an increased risk of death from community acquired pneumonis associated iwth the allele A in a TNF α gene of SEQ ID NO:1 at the -308 locus.

Instead, issued claims of U.S. Patent 6,294,339 are drawn to a method of identifying an individual at an increased risk of death from community-acquired pneumonia (CAP) associated with the A allele in a TNF α gene at the -238 locus and a method of treating patients comprising identifying patients at an increased risk of death from community-acquired pneumonia (CAP) by identifying the

Attorney Docket No.: GCI-0017
Inventors: Wunderink et al.
Serial No.: 09/973,850
Filing Date: October 10, 2001
Page 3

A allele in a TNF α gene at the -238 locus in such patient.
rejected.

Thus, the claims of U.S. Patent 6,294,339 and the instant patent, clearly drawn to identifying different alleles indicative of increased risk of death from CAP, are patentably distinct.

Further, the method of the instant invention wherein patients are identified at having an increased risk of death from community-acquired pneumonia (CAP) associated with the A allele in a TNF α gene of SEQ ID NO:1 at the -308 locus is in no way obvious over claims of U.S. Patent 6,294,339 relating to identifying patients at an increased risk of death from community-acquired pneumonia (CAP) by identifying the A allele in a TNF α gene at the -238 locus.

Withdrawal of this rejection under the judicially created doctrine of obviousness-type double patenting is therefore respectfully requested.

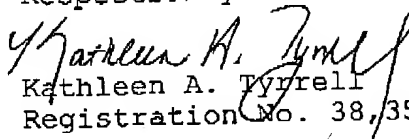
Conclusion

Applicants believe that the foregoing comprises a full and complete response to the Office Action of record. Accordingly, favorable reconsideration and subsequent allowance of the pending

Attorney Docket No.: GCI-0017
Inventors: Wunderink et al.
Serial No.: 09/973,850
Filing Date: October 10, 2001
Page 4

claims is earnestly solicited.

Respectfully submitted,


Kathleen A. Tyrrell
Registration No. 38,350

Date: September 29, 2004

Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515